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THE DEUTERONOMIC TITHE

The purpose of this discussion is to raise problems, rather than to solve them. Certain phases of the Hebrew law regarding the tithe have received little or no attention; and the hope that, when attention is called to them, others may be able to lighten our darkness is, perhaps, sufficient justification for this paper.

The Old Testament references to the tithe are few in number and somewhat indefinite in character. The oldest law on the subject is that of Deuteronomy (12:6, 17; 14:22 f., 28 f.; 26:12 f.). The only other legislation is in P, viz., Num. 18:21-26 and Lev. 27:30-33. The legislation of J (Exod., chap. 34) and of E (Exod., chaps. 20-23) contains no allusion to it. Yet that there was payment of tithes prior to the requirements of the Deuteronomic law is practically certain. The story of Jacob at Bethel (Gen. 28:22 = E) seems to testify clearly to the custom of paying tithes at the shrine there in early times. This conclusion is strengthened by Amos 4:4, which testifies to the custom as practiced at both Bethel and Gilgal in the eighth century B.C. The antiquity of tithing in Israel is also supported by Gen. 14:20, which records that Abraham paid tithes of his booty to Melchizedek, priest-king of Salem. But this support is a slender one in the present state of opinion regarding the date and character of this chapter. In view of these slight data and of the fact that tithing was a widely spread custom in the ancient world,¹ it is safe to conclude that a tithe was paid at the various local shrines in Israel long prior to the Deuteronomic reformation.

The new thing in Deuteronomy is the transfer of the offering of the tithe from the local shrines to the central sanctuary at Jerusalem. The tithe is to be taken of "all the increase of thy seed that cometh forth of the field year by year," viz., "thy corn, thy new wine, and thine oil." This, together with "the firstlings of thy herd and thy flock," is to be eaten "before Yahweh thy God in the place where he shall choose to

¹ It is known to have existed in Babylonia (under the New Empire), Persia, Greece, Rome, Carthage, Lydia, Syria, China, Morocco, among the Sabaeans, and among Mohammedans generally. See C. H. W. Johns, *Assyrian Deeds and Documents*, II (1901), 179 f. and *Babylonian and Assyrian Laws, Contracts and Letters* (1904), pp. xi, 205 f., on the question as to the practice of tithing in Old Babylonia and Assyria. That tithing was practiced in Egypt is practically certain (cf. Gen. 41:34), though in the inscriptions thus far translated I have been able to find only one distinct reference to it. In the Harris Papyrus, Plate 57 l. 8 (see Breasted, *Ancient Records*, IV, § 354) the king declares that he has not taken a tithe of the temple slaves for his own use, as former rulers had done. The careful measurements of fields recorded seem also to have been made for purposes of taxation or tithing.

establish his name," by the offerer and his family, his slaves, and the Levites of his village. Every third year these same Levites, together with the widows and orphans, are to receive the whole of the year's tithe for their support.

Now, questions arise. If a community was expected to take its tithe to Jerusalem and eat it all, as well as the firstlings of flocks and herds, at a single feast, how relatively small the crops must have been! If the community could eat one-tenth of the year's produce at a single feast, how could they subsist for the remainder of the year on the remaining nine-tenths of the crop? It might be supposed that the term "tithe" here was a conventional one, and, like the number forty, not to be taken literally.¹ But any reduction of this sort, it must be borne in mind, is at the expense of the support of the Levites and the poor, whose triennial "tithe" was one of their main sources of supplies. Then again, the later law in Lev. 27:30 ff. includes the tithe of the flocks and herds and expressly provides that they shall be counted fairly and taken as they come, viz., "all the tithe of the herd and the flock, all which passeth under the rod, the tenth shall be holy to Yahweh." This shows that the numerical significance of "tithe" persisted down to the end of the legislative process.

The problem is accentuated by the fact that according to I Sam. 8:15, 17 (cf. I Sam. 17:25; Amos 7:1) the king demanded a tithe of the flocks and of the produce of the fields; while according to I Kings 4:7 ff., 22 f. the land was organized into twelve districts, each one of which was responsible for a month's support of the royal establishment.² Was the poor farmer, consequently, at least twice mulcted, and to a total of one-fifth or more of all that he raised? This is not impossible; but the spirit and attitude of the Deuteronomic law toward the poor is quite the contrary of this. Was there then a conflict between the secular and the religious on this point and are the Deuteronomic law on the one hand, and I Sam 8:15, 17 on the other, a protest against the imposition of a royal tithe and a filing of a prior and exclusive claim for the tithe on Yahweh's behalf?³

Still another complication of the problem is at hand in the institution

¹ My colleague, Dr. D. D. Luckenbill, calls my attention to the fact that the Assyrian *ešru*, *ešreti*, was probably used in this inexact way, in that at times it seems to be practically equivalent to the term "tax" and to carry no precise arithmetical connotation.

² According to Aristotle's *Oecon.* 1345b and 1352b, the sovereigns of Babylonia and Persia were in part supported by tithes; see Driver, *Deuteronomy*, p. 169.

³ So Holzinger on Num. 18:21 ff.

of the fallow year. On any interpretation of this custom, it involved an average annual loss to the farmer and the country of one-seventh of the products of the soil. This, added to the royal tithe and the sacred tithe, makes a total of a little more than one-third of the crops each year, besides the sacred firstlings of the flocks and herds and the royal tithe of the flocks. Furthermore, if the fallow year involved the withdrawal of all land from cultivation each seventh year, as is commonly supposed, what became of the tithe for that year? Should not the law have taken some account of such a break in the regular procedure? And how could the populace live for two successive years upon the product of one year, especially if one-tenth of that product had been already eaten up at the start, and that within a day or two? This latter phase of the economic problem—certainly a most acute one—is disposed of if we conceive of the fallow year as operating upon a different basis. It seems necessary to conclude that various sections of a man's farm lay fallow in rotation, so that each year a new piece, approximately one-seventh of his whole area, was withdrawn from cultivation, while the previous year's fallow was restored to tillage.¹ There is nothing in the law of the Covenant Code (Exod. 23:10 ff.) that militates against this view and in the Deuteronomic Code no mention is made of the fallow year, which is sure proof that no change from the Covenant Code had yet been made. Thus the burden would be evenly distributed throughout the years, instead of coming with crushing weight in a single year. The fact that the closely related law regarding the release of slaves every seventh year (Exod. 21:2 ff.) evidently contemplates a continuous six-year period of service for each and every slave, no matter at what time his servitude began, lends strong support to this interpretation of the fallow year.

The question still remains whether the peasant farmer could possibly carry a tax of one-third of his crops every year, in addition to the rent due the landlord, and other religious and social obligations. Even if we eliminate the royal tithe, as suggested above, by treating the sacred tithe as having displaced it, the tax will still amount to nearly one-fourth, not counting the firstlings of the flocks and herds. Nor was the yield of Palestine's acreage so unusually heavy as to make such a tax rate easier upon the farmer there than elsewhere.

¹ Cf. C. H. W. Johns, *Assyrian Domesday Book* (1901), pp. 19 f.; where it is pointed out that around Harran in Mesopotamia in many cases less than half of the land was under tillage at any one time and that in some cases fields lay fallow every alternate year.

Consideration of these facts together with the question with which we started (viz., how could the tithe possibly be eaten at a feast of short duration?) forces us to ask whether or not the tithe was a bona-fide tenth of all the products of the soil. It is held by several scholars¹ that it was not, but that the Deuteronomic law simply applied the name tithe to the old offering of the first fruits. In support of this it may be urged that in Deut. 12:6, 11, 17; 14:23, and 15:19 f. first fruits are not mentioned, but the tithe occupies the place in conjunction with firstlings that would naturally be given to first fruits if they were to be offered in addition to the tithe. This would also explain the silence of the earlier legislation upon the subject of tithes, in that the first fruits there mentioned are the equivalent of the later tithe. In Deut. 26:2 ff., however, an offering of first fruits is distinctly provided for. This does away with the possibility of equating tithe and first fruits, unless we may suppose that this offering of first fruits was merely a symbolical survival of the old practice, which itself had been swallowed up in the tithe. The phraseology of this regulation regarding the first fruits differs from that of Exod. 23:19, exactly in this respect, that the latter seems to call for the presentation of all the first fruits to Yahweh while the former requires only a small basketful. A more serious obstacle, however, to the identification of the tithe with the first fruits is the fact that in Deut. 18:4 the first fruits are listed among the things given for the support of the priests, the Levites. The only way to overcome this difficulty is by the radical step of eliminating 18:4 as a later addition. But there is no ground for such a treatment of the verse aside from the fact that it is in conflict with 14:22 ff., if the latter is to be interpreted as identifying tithe and first fruits. It seems the part of sober interpretation and criticism to abandon the identification of tithe and first fruits rather than to excise 18:4 simply in order to maintain it.

There is certainly no basis for the suggestion that the tithe was merely a tenth of the first fruits.² The objections to the identification of tithe and first fruits all hold good here. Furthermore, if such had been the intention of the law, it surely would have been indicated in some way; but there is not the slightest hint to that effect. It has also been suggested that the whole tithe was not brought to the sanctuary and eaten before Yahweh, but only a certain proportion of it.³ But the

¹ E.g., W. Nowack, *Archäologie*, p. 257; G. F. Moore, *Encyclopedia Biblica*, article "Tithes"; Holzinger, on Num. 18:21 ff.; C. Steuernagel, on Deut. 14:22 ff.

² As proposed by I. Benzinger, *Encyclopedia Biblica*, article "Taxation" (§ 9 f.).

³ So Dillmann on Deut. 14:28 ff.

mere fact that in Deut. 26:12 the word "all" appears in connection with the tithe of the third year is hardly sufficient to support the contention that in the other two years all the tithe was not brought to the shrine. Nor does it seem possible to suppose that the tithe was not intended to apply to all the products of the soil, for in Deut. 14:22 the injunction applies to "all the increase of thy seed which comes forth of the field year by year"; and in vs. 23, "grain, wine, and oil" are specifically mentioned.

The charity tithe of the third year also raises questions. This is provided for in Deut. 14:28 f. and 26:12 f., which prescribe that "all the tithe of thine increase in that year" (viz., "the third year, the year of tithing") shall be brought forth and deposited "within thy gates" as a source of supply for the hungry Levites, sojourners, fatherless, and widows of the town, "who shall come, and shall eat, and be satisfied." The manner and time of eating are not specified, so that we do not know whether a single great feast for the Levites and the poor in each town was contemplated, or a series of meals at suitable times under public auspices, or a doling-out to such as were in need upon their application from time to time to the proper authorities. It seems, on the whole, more likely that it was administered as a sort of poor-rate or poor-fund for the alleviation of cases of need as they might arise than that it was consumed in reckless feasting. This seems so especially from the fact that emphasis is laid on the requirement that the Levite has no lot nor inheritance with the rest of Israel. The triennial tithe is intended as a partial compensation to him for that lack.

If the triennial tithe was a poor-fund and if it was identical in scope and quantity with the tithe of the other two years,¹ it will be seen that any interpretation which involves a diminution of the regular tithe entails a corresponding diminution of the amount available for charity toward the poor and the Levite. The Levite, to be sure, was not wholly dependent upon the triennial tithe. He had his portion in the annual tithe and he received portions of all sacrificial animals (Deut. 18:1, 3, 4), together with the first fruits of grain, wine, oil, and wool. He also seems to have had some private property, real estate or personal (Deut. 18:8). The poor were by no means so well cared for by the law. They were largely left to the generosity of the well-to-do, the only legal allotments to them being a share in the great annual feasts (Deut. 16:11, 14), the forgotten sheaf (24:19), the gleanings of the olive and

¹ So, e.g., Driver, *Deuteronomy*, *ad loc.*; Benzinger, *Encyclopedia Biblica*, article "Taxation"; G. F. Moore, *Encyclopedia Biblica*, article "Tithes."

fruit trees (24:20), and the untilled crop of the fallow fields (Exod. 23:10). The triennial tithe of 14:29 and 26:12 was probably, therefore, one of their chief means of subsistence.

If the triennial tithe was simply the ordinary annual tithe devoted to a specific purpose one year in every three, how is the fact of such a special application of the third year's tithe to be accounted for? Why was the tithe not so used every year? If the triennial tithe constituted any large proportion of the maintenance of the Levite and the poor, it is difficult to understand how they were sustained during the two years in which they received no such tithe. Such periodic and spasmodic charity would be almost worse than none at all; for it would but tend to demoralize by interrupting the habits of industry and thrift developed during the lean years. It is an impracticable supposition that the triennial tithe was stored up and made to cover the needs of the entire three years. If the tithe were abundant enough for such a procedure, it would but intensify the difficulty we recognized at the start, in that the amount to be eaten at the annual feast in the other two years would be appallingly large. Furthermore, facilities for storage were probably not good enough to insure the conservation in good condition of so much produce for so long a time. Still further, we wonder at what point the series of triennial cycles was started out. Of course, if the sabbatical year in which land was to lie fallow came regularly throughout the land every seventh year, the "third year" would naturally be counted from the sabbatical year. But such a sabbatical year seems practically out of the question.

Such difficulties as these compel us to question. After all, would a practical legislation ever contemplate such anomalies as the foregoing? Are we not bound to suppose that the triennial tithe was not administered in any such way as we have thus far considered? Driver well says that the expression "year of tithing" in Deut. 26:12 "seems to authorize the inference that some ancient custom, connected with the payment of the tithe, must have led to every third year being called *κατ' ἐξοχήν*, the tithe-year." Benzinger declares¹ that "by the 'third year' we are to understand not a fixed date holding good for the whole country, but a relative one, falling differently in different places or with different families, yet always in such a way that every year some portion of the Israelite nation was paying its 'tithe of the third year' for the poor and similar objects." This suggestion may well be in the right direction, for it does away with the impracticable character of the legislation and makes of

¹ *Encyclopædia Biblica*, article "Taxation" (§10).

it an intelligible and useful institution. Possibly this "year of tithing" is to be connected in some way with the custom of fallowing the land. If one-seventh of the fields lay untilled every year, perhaps the "third year" was counted from the fallow year. In this way, each piece of fallow land would pay a special tithe in the third year after it came back into tillage. Thus one-seventh of the land would always be paying the third-year tithe and the spasmodic and periodic character of the charity would be done away with. This would certainly be a tithe sharply distinguished from the annual tithe and there would be no insuperable difficulty in the way of regarding it even as a second tithe¹ upon the portions of the land to which it applied. The reason for the selection of the third year in such a usage, it must be granted, does not appear; but to this objection all proposed explanations so far lie open. Later laws and customs support some such understanding of the third-year tithe as this in at least two respects. In the first place, the importance attached to the tithe as one of the main sources of support for the priesthood is more easily understood as a development from previously existing practice than as the sheer invention of fertile imaginations; cf. Mal. 3:8-10; Neh. 10:37 ff.; 12:44; 13:5 ff.; Num. 18:21 ff.; Lev. 27:30 ff.; 2 Chron. 31:5 ff. The third-year tithe, if so administered as to constitute a steady and constant source of supply, would furnish just the sort of starting-point required. The law which disposed of a part of the steadily flowing stream of tithes to the advantage of the priesthood was later made to include all of it. In the second place, the same consideration holds true of the later interpretation of the third-year tithe as a second tithe in addition to the general tithe levied annually; so, e.g., Tobit 1:7 f.; Josephus, *Antiq.*, IV, viii, 22; and Jerusalem Targum on Deut. 26:12 f.; and the Greek rendering of the same passage. It is quite true that the language of Deuteronomy does not specify this as a second tithe. But it must be considered that the Deuteronomist was probably not introducing anything new here, but dealing with facts wholly familiar to those for whom he was legislating. Thus the terms he used may well have carried a significance that escapes us because of our lack of that knowledge of the entire situation which was possessed by the Deuteronomist's contemporaries.

On this interpretation of the third-year tithe, the burden upon the farming population would be heavy, but not unbearable. One-tenth of

¹ As LXX translates it in Deut. 26:12, viz., τὸ δεύτερον ἐπιδέκατον, which rendering, however, is probably due to a misreading of שְׁנֵי as שְׁנִי. Yet the rendering shows how this tithe was understood in the age when the Greek rendering of the Pentateuch was made.

the produce of six-sevenths of a farmer's land was given as general tithe each year; one-seventh of his land lay idle annually; and one-tenth of one-seventh of his land, or of one-sixth of his land under tillage, was tithed a second time each year. The sum total of this taxation would amount to a trifle more than the produce of one-fourth of his total acreage. To this must be added, however, the required offering of the firstlings of the flocks and herds, the annual contribution toward the support of the royal court (see p. 120), and, in the case of the peasant farmer, the annual rent.

This suggestion as to the range of the third-year tithe is not put forth as a definitive solution, but merely as a provocation to thought and investigation. The whole legislation regarding the tithe is beset with problems. The extravagant and impracticable character of the tithing requirements of the Priestly Code and the Chronicler has long been recognized and the impossibility of reconciling them with the Deuteronomic law has been freely acknowledged. But the uncertainty and obscurity of the Deuteronomic legislation itself has not been brought as fully to light as is desirable, if we are to make any progress in the accurate interpretation of that legislation. Such a study as this cannot but bring to our attention afresh the fact that Deuteronomy is not primarily a lawbook, but a collection of sermonic addresses. We ought, therefore, not to insist too strongly upon obtaining from Deuteronomy strict, definite, and explicit statements of law and fact. We go to preachers not for legislation but for inspiration.

It is also more than probable that the actual practice of the people in general and of the temple staff in particular was not solely guided by so incomplete and ambiguous a set of laws as that of the Deuteronomic Code. The custom of the ages as it had come down to the days of Josiah was more rigid and more specifically defined and was not likely to have been wholly set aside and abandoned upon the appearance of the Deuteronomic law. This custom had doubtless also formulated itself in laws and much of this old legislation is probably incorporated, with more or less modification, in the legislation of P.

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